Supreme Court, U.S.
FILED
DEC 18 1992
OFFICE OF THE CLERK

No. 92-875

In The

Supreme Court of the United States

October Term, 1992

DIANE E. HONEYCUTT, ET AL.,

Petitioners,

v.

JANE S. NORBECK, TRUSTEE OF THE JANE NORBECK TRUST DATED NOVEMBER 20, 1963,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Montana

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Can an assignment of a federal oil and gas lease that was rejected by the Secretary of the Interior in 1936 now be enforced by the assignee under state law?

2. Did the Montana Supreme Court decision, refusing to enforce an assignment rejected by the Secretary, rest on adequate and independent state grounds?

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OPINIONS BELOW

The Montana Supreme Court's decision in this case is now reported as *Norbeck v. Crawford*, ___ Mont. ___, 836 P.2d 1231 (1992).

ADDITIONAL STATUTE INVOLVED

In addition to the statutes set forth in the Petition for Writ of Certiorari, the following statute is also involved in this case:

> 30 U.S.C. § 187. Assignment or subletting of leases; relinquishment of rights under leases; conditions in leases for protection of diverse interests in operation of mines, wells, etc.; State laws not impaired (41 Stat. 449).
>
> No lease issued under the authority of this chapter shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the work day to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any child under the age of 16 in any mine below the

surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare. None of such provisions shall be in conflict with the laws of the State in which the leased property is situated.

STATEMENT OF THE CASE

The Petitioners' Statement of the Case is littered with inaccuracies, omissions, and misstatements.

Federal oil and gas lease Billings 021056(b) was issued by the United States to George Norbeck on October 10, 1934. The lease covered the NE¼ of Section 12, Township 8 North, Range 59 East, Fallon County, Montana (the "subject lands"), and other lands. All of the lands in the lease are owned by the United States. Lease 021056(b) was one of two leases that grew out of federal prospecting permit Billings 021056.

The lease stated that it was granted "for a period of twenty (20) years, with the preferential right in the lessee to renew this lease for successive periods of ten (10) years, upon such reasonable terms and conditions as may be prescribed by the lessor, unless otherwise provided by law at the time of the expiration of such periods."

In the lease the lessee agreed "[t]o furnish a bond with approved corporate surety in the penal sum of $5,000, conditioned upon compliance with the terms of

the lease." The lessee also agreed "[n]ot to assign this lease or any interest therein, nor sublet any portion of the leased premises, except with consent in writing of the Secretary of the Interior first had and obtained."

In May of 1934, George Norbeck entered into an operating agreement, subleasing his interest in the subject lands and permit 021056 to Fidelity Gas Co. In the agreement, Mr. Norbeck reserved "[t]wenty-five percent (25%) of the net proceeds" of all production from or attributed to the subject lands, after deducting outstanding royalties.

Also in the agreement, Mr. Norbeck appointed the secretary of Fidelity Gas as his "true and lawful attorney-in-fact to . . . perform all acts necessary to maintain [his] titles to [his] lands [as] described; and particularly to make, execute and sign for and on behalf of [him], and in [his] name . . . , any and all petitions to the Department of the Interior in connection with . . . seeking relief of any kind on any petition to the Department in connection with such permit or lease, [and] ratifying all that such attorney may do in the premises."

After the operating agreement was approved by the Secretary of the Interior, Mr. Norbeck retained the "record title interest" in the lease, as the lessee of record with the General Land Office of the Department of the Interior. This fact, which was omitted by the Petitioners, is important because under Lease 021056(b), only the record title lessee was entitled to renew the lease at the end of its twenty-year term.

The General Land Office was the predecessor to the modern day Bureau of Land Management (BLM) of the Department of the Interior, the administrative agency in charge of federal oil and gas leasing, headed by the Secretary of the Interior. However, the General Land Office was, like the BLM now, responsible for more than merely recording or registering federal leases. This characterization of the Land Office on p. 4 of the Petition is inaccurate and misleading. The terms "recording" and

"registration" are completely foreign to the Mineral Leasing Act (A. 22-23) and the Department of the Interior regulations. The Mineral Leasing Act and regulations clearly provide that assignments are filed with the BLM, formerly the General Land Office, for approval by the Secretary, not merely for registration or recording.

By assignment dated June 20, 1935 (A. 20-21), George Norbeck attempted to transfer to Mrs. M. H. Crawford his record title interest as lessee of the subject lands under permit 021056 and any lease issued pursuant to the permit. The assignment was made subject to the 1934 operating agreement with Fidelity Gas.

Contrary to the statement on p. 4 of the Petition, Mr. Norbeck did not agree in the assignment to undertake all necessary renewals and other applications until the assignment was recorded by the Department of the Interior. What the assignment (A. 21) actually says is this:

> The said George Norbeck and Jane M. Norbeck do further represent and warrant that all rentals due to the United States of America, on said property, and all royalties reserved or held thereon, have been paid to December 1, 1934; and they further stipulate and agree that they will pay such royalties and rentals to date hereof, (assignee assuming the payment of rentals and royalties from said date).

The assignment was filed for approval with the Federal Land Office in Billings, Montana on August 6, 1935. By decision dated January 31, 1936, the Department of the Interior, General Land Office, in Washington, D.C., "rejected" the assignment to Mrs. Crawford, because she did not submit affidavits showing her qualifications to hold interests in federal leases, nor did she provide the required $5,000 lease bond. The Land Office decision pointed out that "the approval of an assignment by the Secretary of the Interior is discretionary [and] [s]uch approval when given, records transfers of title and approves qualifications of assignees, since it is with the legal title holder or transferee that the Government deals

as lessee." The Land Office rejection of the assignment has never been appealed, and neither the Secretary nor any agency within the Department has ever approved the assignment.

Page 4 of the Petition tries to make it sound like it was Mr. Norbeck's attorney's fault that the Land Office rejected the assignment. That is not so. No one knows who the attorney represented, if anyone, in filing the assignments with the Land Office, but it has never been established that he was the attorney for Mr. Norbeck, nor was any such fact ever found by the State Courts below, nor was any such issue even raised or alleged by the Petitioners in the State Courts. The facts of this case have been difficult to reconstruct because of the long passage of time, but it appears that the Petitioners are content to make them up to suit their purposes.

The Petitioners argue on p. 12 of the Petition that there is no evidence whether Mrs. Crawford knew the assignment had been rejected. However, there is a March 16, 1939 letter in the BLM file (which was part of the record before the State Courts) from F. Millar Cloud to the Commissioner of the General Land Office complaining about Crawford's refusal to pay the annual rentals on the lease, and pointing out that the rentals had actually been paid by the owners of Lease 021056(a), the other lease that grew out of the original prospecting permit. The owners of the "(a)" lease were afraid that if they did not pay rentals on the "(b)" lease, both would be terminated by the General Land Office. Cloud's letter states in part:

> Many attempts have been made to persuade Mr. Crawford to contribute or pay the annual rental to the United States with respect to the lands outside of the Unit and apparently having no value insofar as oil or gas is concerned. All efforts have been met without success. Those people in group "A" for several years last past have paid such rental or caused the same to be paid to the United States of America under the

> belief that it was necessary to do so in order to keep the lease in good standing.
>
> * * *
>
> I have been advised that Mr. Crawford refuses to take any step in the matter. The land appears to be non-productive insofar as oil or gas is concerned which appears to be borne out by the fact that it was left out of the Unit. It is apparently the attitude of Mr. Crawford that some day something might happen and in the meantime he feels elated that he is for no cost obtaining a "free ride."

The Land Office responded in a letter later that month telling Mr. Cloud that the assignment to Mrs. Crawford had never been approved by the Department of the Interior, and that "[a]ccording to the record, until the assignment to Mrs. Crawford is approved by the Department, George M. Norbeck, present title holder of the NE 1/4 Sec. 12-8-59, which is outside the Unit plan, is responsible for the payment of the annual rental."

By an agreement in 1951, Fidelity Gas subleased to Shell Oil Company all of the operating rights in the "deep formations" below a depth of 2,000 feet in the NE1/4 of Section 12 and other lands. The Land Office approved the agreement in 1954.

At the end of the twenty-year term of Lease 021056(b), Fidelity Gas filed an application for a renewal lease with the General Land Office. The application was signed by the secretary of Fidelity Gas as the attorney-in-fact for Mrs. Crawford.

By decision dated March 29, 1955, the Land Office rejected the renewal application filed on behalf of Mrs. Crawford because "[a]uthority of the attorney-in-fact to sign the application for Mrs. Crawford was not submitted," and because "the assignment to Mrs. Crawford [had been] rejected for the reason that she did not furnish a showing as to her qualifications nor the required $5,000 lease bond." The Land Office decision went on to say:

> Inasmuch as an assignment of Lease 021056(b) to Mrs. Crawford has not been approved, she has never been recognized as the record title owner of this lease. Therefore, her application for renewal is hereby rejected subject to the right of appeal within thirty days from receipt of this decision.
>
> If no appeal is filed within the time allowed, George Norbeck, who is still the record title owner of Lease 021056(b), will be given an opportunity to file an application for renewal of the lease.

Contrary to the statement on p. 12 of the Petition, Fidelity Gas did not treat the rejected assignment as valid between the parties. After the renewal application on behalf of Mrs. Crawford had been rejected, Fidelity Gas filed another application, but this time as the attorney-in-fact for George Norbeck under its appointment in the 1934 operating agreement. All of Fidelity Gas Co.'s activities were on behalf and in the name of George Norbeck, as his attorney-in-fact.

The Norbeck renewal application stated that "Applicant purports to be the record title owner of said lease insofar as it covers [the subject lands], . . . ; that in connection with the renewal of said lease, Applicant has a preferential right to renew the same for a term of ten (10) years and does hereby assert such preferential right over all others."

The Land Office accepted the authority of Fidelity Gas to act on behalf of Mr. Norbeck, and transmitted the renewal lease forms to Fidelity Gas for execution. Later, the Land Office approved a ten-year renewal lease to George Norbeck.

The first renewal lease was issued to George Norbeck effective October 1, 1954. The lease was granted "with preferential right in lessee to renew this lease for successive periods of 10 years, upon such reasonable terms and conditions as may be prescribed by lessor, unless otherwise provided by law at expiration of such periods."

Ten years later, Fidelity Gas filed an application for another renewal lease as the attorney-in-fact for George Norbeck. The 1964 application contained the same statements as the 1954 application. The BLM issued the second renewal lease to George Norbeck effective October 1, 1964. Four years later, the subject lands were committed to the Pennel Unit Agreement.

George Norbeck died intestate in 1938. His estate was never probated. In the late 1940's, steps were taken to have his interests transferred into the name of his widow, Jane M. Norbeck, and affidavits of heirship for Mr. Norbeck were filed with the Land Office.

After Mr. Norbeck's widow passed away, his successors were contacted by Shell Oil Company. In a letter dated April 9, 1968, Shell also asked them to submit affidavits of heirship for George and Jane Norbeck, along with ratifications and consents to the Pennel Unit Agreement, which they did. Shell had to get their consents to the unit agreement, as required by federal regulations, because George Norbeck was still the lessee of Lease 021056(b) as shown on the Land Office records. The statement on p. 4 of the Petition, that Mr. Norbeck's successors took no further actions in connection with the lease after he passed away, is simply untrue.

Shell Oil formed the Pennel Unit in 1968. The subject lands were included as Unit Tract No. 1. Since then, more than $420,000.00 in proceeds of production from the unit have been allocated to the 25% net proceeds interest reserved by Mr. Norbeck in his operating agreement with Fidelity Gas. Shell held these monies for the legal owner, except for certain amounts that were escheated to the State of North Dakota. Contrary to the statements on pp. 5, 6, 12-13 of the Petition, it is not a fact nor did the State Courts below find that Shell Oil paid the production proceeds into a suspense account "titled" for Mrs. Crawford, nor is it true that Shell recognized the assignment to Mrs. Crawford as being valid. Shell had no power or authority to decide title. Contrary to the statement on p.

12 of the Petition, the State of North Dakota did not treat the rejected assignment as valid. There are no such facts in the record, nor were any such facts alleged or found by the State Courts as to how the production proceeds came to be escheated to the State of North Dakota, nor how they were held afterwards.

By Notice to the "Heirs of George Norbeck" dated October 28, 1968, the Land Office informed the Norbeck heirs that "[t]he lease file of producing oil and gas lease BILLINGS 021056(b) shows that George Norbeck is the lessee of record title interest in and to the [subject lands];" that under the federal regulations they had to establish their succession to his interests in the lease; and that "[e]ach of the heirs to these interests must submit an originally executed statement as to his or her qualifications, interests and holding in Federal oil and gas leases in the State of Montana."

By decision dated August 18, 1987, the BLM recognized that "[t]he evidence [which had been] submitted is sufficient to establish Helen N. Bernard, Collette M. Norbeck, Virginia Norbeck and Sterling M. Norbeck as the ultimate successors-in-interest to the Estate of George Norbeck [and that] this office recognizes the interests formerly held by the Estate of George Norbeck are now held in the above-named heirs in oil and gas lease MTBIL 021056(B)." Contrary to the statement on p. 5 of the Petition, the Norbeck heirs were clearly not "dormant" with respect to Lease 021056(b), and certainly not as dormant as Mrs. Crawford and her successors, who could not even be found.

The Norbeck heirs subsequently transferred all of their interests in Lease 021056(b) to the Jane M. Norbeck Trust, Julius A. Bernard, Trustee. The assignment to the Trustee was approved by the BLM effective on August 1, 1987. The BLM later recognized Jane S. Norbeck as the successor trustee by notice dated September 21, 1988.

By letter dated September 29, 1988, Shell Oil notified the successor trustee that Shell had reviewed her title to

the net proceeds interest reserved by George Norbeck in the operating agreement with Fidelity Gas. However, Shell, for its own protection, was unwilling to disburse the allocated proceeds without a quiet title action.

Jane S. Norbeck, Trustee of the Jane M. Norbeck Trust, brought this action in the Montana Sixteenth Judicial Court for Fallon County to quiet her title. The named defendants were all of the successors to Mrs. M. H. Crawford. None of the defendants answered, and their default was taken. The State District Court entered its quiet title decree in favor of the Trustee on December 7, 1990.

On April 19, 1991, some of the defendants filed a motion for relief from judgment. These defendants, the Petitioners here, claimed to be all but one of Mrs. Crawford's heirs, and the successors to 39/40ths of her ownership. The other heir, Dorothy Mulliken, successor to 1/40th of Mrs. Crawford's ownership, has never appeared in this action. On June 4, 1991, the District Court vacated the default judgment "to allow the case to be decided on its merits."

It is undisputed that the Petitioners did not know anything about the ownership claims they are making until they were contacted by a professional title searcher, International Searchers, Inc. In their contracts with International Searchers, the Petitioners admitted that they were "unaware of the existence" of the monies held by Shell, and had "no prior knowledge" of any claim to the disputed interest. In their contracts, they appointed International Searchers as their exclusive agent to pursue their claims. International Searchers is paying for all of their court costs, legal fees and expenses, in return for half of any monies they recover.

After the default judgment was lifted, the Petitioners filed their Answer and Counterclaim, essentially denying the Trustee's ownership, and seeking to quiet their title to 39/40ths of the disputed interest.

On January 17, 1992, the District Court issued its Memorandum and Order Granting Summary Judgment (A. 7-19). The District Court ruled that all of the production proceeds allocated to the disputed interest to date are owned by the Trustee, but the Court gave the Petitioners the opportunity to apply to the BLM for approval of the rejected assignment. Under the District Court's ruling, should the BLM approve the assignment, the Petitioners would own 39/40ths of the production allocated to the disputed interest going forward after the first day of the month following the filing of their application (A. 13). The District Court based its decision on 30 U.S.C. § 187a of the Mineral Leasing Act, and *Oasis Oil Co. v. Bell Oil & Gas Co.*, 106 F.Supp. 954 (W.D. Okla. 1952). However, the Court also found that the Petitioners' claims to the existing proceeds are barred by laches, an equitable doctrine under Montana law (A. 13-16).

On appeal, the Montana Supreme Court unanimously affirmed the District Court's decision with this:

> The material facts are not in dispute. Norbeck made an assignment to Mrs. Crawford but she failed to perfect the assignment with the Department of Interior pursuant to the language of the original lease and 30 U.S.C. § 187a. Later attempts were made to have Mrs. Crawford pay the rentals but without success. As a result the obligations under the lease remained with Norbeck. Neither the assignor nor assignee, nor their heirs, acted relative to any rights they had until awakened by Shell Oil. The District Court ordered the existing proceeds of the 25% interest paid to the Norbeck heirs, however by its order it allowed the Crawford heirs the opportunity to perfect the assignment by seeking approval of the Secretary of Interior under 30 U.S.C. § 187a.
>
> Based on the evidence presented in the record, we agree with the determination of the District Court and affirm the District Court.

Norbeck v. Crawford, ___ Mont. ___, ___, 836 P.2d 1231, 1234 (1992) (A. 5-6).

SUMMARY OF ARGUMENT

The Montana Courts properly applied the Mineral Leasing Act and state law to determine the legal effect of the rejected assignment, and to assess the equities between the parties, in deciding ownership of the disputed interest. The Petitioners' claims under the rejected assignment are contrary to the express provisions of the Mineral Leasing Act, which require that assignments of federal leases be approved by the Secretary. To the extent there is any federal question in this case, the Montana Courts decided it correctly. An assignment of a federal lease that has been rejected by the Secretary cannot be enforced by the assignee under state law. Such a rule would obliterate the Mineral Leasing Act requirement that lease assignments be approved by the Secretary, as well as the federal policy inherent in that requirement.

The State Courts also held that the Petitioners' claims are barred by laches, an equitable state law doctrine, because the rejected assignment was not effective to relieve Mr. Norbeck and his successors of their contractual responsibilities to the United States under the lease. Laches is an independent state law ground for the rulings by the Montana Courts.

The reasons presented by the Petitioners for issuing the writ have no merit. The State Court decisions below do not conflict with any decision of this Court, nor any decision of a United States court of appeal. It is the Petitioners' argument – that the Montana Courts should have applied state law to enforce the rejected assignment – that conflicts with the federal policy in the Mineral Leasing Act. Their argument also ignores the holdings by

the State Courts that the Petitioner's claims are barred by laches under state law. The Petition should be denied.

REASONS FOR DENYING THE WRIT

THE REJECTED ASSIGNMENT IS INVALID UNDER FEDERAL LAW

The Petitioners apparently claim that the Montana Courts erred by not enforcing the rejected assignment under state law. Their argument is that the Secretary's rejection of the assignment is meaningless, and that the State Courts should not have considered the Mineral Leasing Act to determine the legal effect of the rejected assignment, nor to assess the equities between the parties. The Petitioners argue that the federal policy under the Mineral Leasing Act and this Court's decision in *Wallis v. Pan American Petroleum Corp.*, 384 U.S. 63 (1966), is that state law controls the legal effect of a federal lease assignment, as between the assignor and the assignee, regardless of whether the assignment has been rejected by the Secretary. They are wrong.

Contrary to the statement on p. 8 of the Petition, the issue in this case is not whether the rejected assignment was nullified by the Department's refusal to "register" it. The Department of the Interior does not "register" assignments, and never has. Assignments are filed with the Department so they can be approved by the Secretary, as required by the Mineral Leasing Act.

Federal oil and gas leases are governed by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437). The current Act is codified in 30 U.S.C. § 181 et seq. (1990). Section 30 of the original Act (A. 23-24) stated that "[n]o lease issued under the authority of this Act shall be assigned or sublet, except with the consent of the Secretary of the Interior." These provisions are still part of the current Act at 30 U.S.C. § 187 (1990). The obvious purpose of these provisions is to ensure that lessees holding

interests in federal leases are properly qualified, accountable to the United States, and responsible for their actions on federal leases.

Section 13 of the 1920 Act gave the Secretary authority to issue two-year prospecting permits, granting the permittee the right to prospect for oil and gas in the lands covered by the permit. Section 14 provided that upon discovery of oil and gas, the permittee was entitled to a lease on one-fourth of the lands in the permit. The permittee also had a preference right to a lease on the remaining lands. Under Section 17 of the 1920 Act, both of these leases were issued for a term of twenty years, with the "preferential right" in the lessee to renew for successive periods of ten years upon such reasonable terms and conditions as the Secretary prescribed. Lease 021056(b) was the "preference right" lease that grew out of prospecting permit Billings 021056.

Before 1946, paragraph 12½ of the Department of the Interior regulations (A. 25) stated:

> ASSIGNMENTS OF PERMITS Permits, after being awarded, may be assigned to qualified persons or corporations upon first obtaining consent of the Secretary of the Interior.

Paragraph 17 of the regulations also set out the prescribed federal oil and gas lease form. Section 2(l) of the form provided for the lessee's agreement:

> Not to assign this lease or any interest therein, nor sublet any portion of the leased premises, except with the consent in writing of the Secretary of the Interior first had and obtained.

Lease 021056(b) had exactly the same provision.

Federal oil and gas leases have always been subject to many restrictions and on-going supervision by the Secretary of the Interior. As this Court said in *Boesche v. Udall*, 373 U.S. 474, 477-478 (1963):

> Unlike a land patent, which divests the Government of title, Congress under the Mineral Leasing Act has not only reserved to the United

> States the fee interest in the leased lands, but has also subjected the lease to exacting restrictions and continuing supervision by the Secretary. Thus, assignments and subleases must be approved by the Secretary. 30 U.S.C. § 187 . . . .

When the Land Office rejected the assignment to Mrs. Crawford, the Mineral Leasing Act, the Department regulations, and Lease 021056(b) itself, all stated that assignments were not allowed without prior consent of the Secretary. The assignment to Mrs. Crawford was rejected, but not because of any failure on Mr. Norbeck's part, nor because of any defect in his title. It was rejected because Mrs. Crawford never took the trouble to establish her qualifications or to file the required lease bond with the Land Office as she was required to do to have the assignment approved.

On p. 8 of the Petition, the Petitioners argue that under *Wallis v. Pan American Petroleum Corp.*, 384 U.S. 63 (1966), state law alone governs dealings between private parties concerning a federal oil and gas lease. The *Wallis* decision was based on facts that are very much different from those presented here.

As the *Wallis* Court noted, under the federal leasing system, the Mineral Leasing Act of 1920 governs leases on public domain lands, but another act, the Mineral Leasing Act for Acquired Lands, applies to leases on federal lands not considered public domain. See, *Wallis*, 384 U.S. at 65, n. 2. In that case, Wallis filed lease applications on certain lands under the Act for Acquired Lands. He then transferred his interest in the applications to Pan American. Wallis later filed separate applications on the same lands under the Mineral Leasing Act of 1920. The lands were ruled by the Department to be public domain lands. The acquired lands lease applications were rejected, and the Secretary issued leases to Wallis under the Mineral Leasing Act. Pan American sued Wallis for its interests in the leases.

The trial judge ruled that Louisiana law governed the rights of the parties. The state statute of frauds required a written agreement to transfer any interest in an oil and

gas lease. The judge held that the written contracts between Wallis and Pan American only covered acquired lands leases and granted judgment to Wallis. The Court of Appeals reversed, holding that the judge erred in applying state law, and remanded for a new trial applying principles of federal common law.

This Court granted certiorari to address whether rules of federal common law should be fashioned to govern dealings of private parties in an oil and gas lease issued under the Mineral Leasing Act. *Wallis*, 384 U.S. at 67-68. Like the cases cited on pp. 13-14 of the Petition, the central question in the *Wallis* case was whether federal common law should be fashioned and then applied, instead of state law.

The *Wallis* Court followed the "guiding principle . . . that a significant conflict between some federal policy or interest and the use of state law in the premises must first be specifically shown" before rules of federal common law should be fashioned. *Wallis*, 384 U.S. at 68.

This Court ultimately found no significant threat to any identifiable federal policy in the *Wallis* case, and thus no need to fashion a body of federal common law, because there is nothing in the Mineral Leasing Act expressing policies inconsistent with the outcome under Louisiana law. *Wallis*, 384 U.S. at 69. The Petitioners have missed this point. *Wallis* stands for the proposition that there is no need to fashion federal common law where applying state law does not conflict with federal policy. That is not the same as saying that state law must always be applied even where it conflicts with the express provisions of the federal statute. As the *Wallis* Court pointed out, "[i]f there is a federal statute dealing with a general subject, it is a prime repository of federal policy . . . ." *Wallis*, 384 U.S. at 69.

This case is much different than *Wallis*. The Respondent does not argue that federal common law should be fashioned and applied to this case. There is no need to consider any federal common law here because the statute is clear. The Mineral Leasing Act has always expressly stated that federal leases cannot be assigned without

consent by the Secretary. It is clear that Congress has the power to insist on this requirement, and the provisions of the Act are the prime repository of federal policy on the matter. Obviously, that policy does not support the Petitioners' argument that an assignment rejected by the Secretary must still be enforced between the parties under state law.

The lands covered by Lease 021056(b) are owned by the United States. Article IV, Section 3, Clause 2 of the United States Constitution provides that the "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory and other Property belonging to the United States." Congress' constitutional power over the proper administration and disposition of public lands is without limitation. Once Congress has acted in that regard, both the courts and the executive agency have no choice but to follow strictly the dictates of such statutes. *United States v. California*, 332 U.S. 19, 27 (1947).

In *California Coastal Comm'n. v. Granite Rock*, 480 U.S. 572, 580-581 (1987), this Court said:

> This Court has "repeatedly observed" that " '[t]he power over the public lands thus entrusted to Congress [by the Property Clause of the United States Constitution] is without limitations.' " *Kleppe v. New Mexico*, 426 U.S. 529, 539 . . . (1976), quoting *United States v. San Francisco*, 310 U.S. 16, 29 . . . (1940).
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> We made clear that "the State is free to enforce its criminal and civil laws" on federal land so long as those laws do not conflict with federal law. [citation omitted].
>
> * * *
>
> [A]s we explained in *Kleppe*:
>
> > "Absent consent or cession a state undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally

> surely retains the power to enact legislation respecting those lands pursuant to the Property Clause. And when Congress so acts, the federal legislation necessarily overrides conflicting state laws under the "Supremacy Clause."

Following this same reasoning, the Court in *Wallis* rejected the argument that if state law controlled dealings between private parties in a federal lease, the Secretary would not be able to protect the United States from unacceptable assignees. The *Wallis* Court pointed out that:

> The Secretary, who must approve all assignments before the lease obligations or record titles are shifted finally, is entirely free to disapprove assignees however valid their assignments may otherwise be.

Wallis v. Pan American Petroleum Corp., 384 U.S. 63, 70 (1966).

The federal policy in the Mineral Leasing Act is against using state law to enforce assignments that have been rejected by the Secretary. The holdings by the Montana Courts below, in refusing to give effect to the rejected assignment to Mrs. Crawford, are fully consistent with this federal policy. It is the Petitioners' argument for enforcing the rejected assignment under state law that conflicts with the Mineral Leasing Act and its policy of subjecting federal lessees to continuing supervision by the Secretary. Indeed, this policy would be lost if unacceptable assignees were allowed to evade it so easily. Nevertheless, the Petitioners are asking this Court to order the Montana Courts to enforce the rejected assignment under state law, contrary to the express provisions of the Mineral Leasing Act. It is the Petitioners' argument that must be rejected.

THE PETITIONERS' "NON-ENTANGLEMENT" THEORY DOES NOT APPLY TO THE MINERAL LEASING ACT

On pp. 8 and 9 of the Petition, the Petitioners rely on *Martin v. National Security Co.*, 300 U.S. 588 (1937) and *McKenzie v. Irving Trust Co.*, 323 U.S. 365 (1945) to argue that the federal policy in the Mineral Leasing Act is "non-entanglement." Neither case is applicable here, since neither dealt with the Mineral Leasing Act, nor its prohibition on lease assignments without consent of the Secretary.

The *Martin* and *McKenzie* cases dealt with assignments of money claims against the United States, not assignments of federal oil and gas leases. Under federal statutes other than the Mineral Leasing Act, the policy behind a restriction on assignments without consent may well be to prevent the government from becoming embroiled in private disputes. That is not true of the Mineral Leasing Act, however (not that the federal government is embroiled in this case). The Mineral Leasing Act is much different than the statutes considered in *Martin* and *McKenzie*, and its purpose of protecting the United States is also much different. Not surprisingly, the Mineral Leasing Act also has a different method of protecting the government.

The unique purpose of the Mineral Leasing Act is to protect the United States as an oil and gas owner and lessor. Its method of providing this protection is by insuring that federal lessees are qualified and responsible for their actions on federal leases. The Act accomplishes this protection by subjecting federal lessees to exacting restrictions and qualification requirements, plus continuing supervision by the Secretary. That is why assignments of federal leases have to be approved by the Secretary. *Boesche v. Udall*, 373 U.S. 474, 477-478 (1963). The United States wants to know and directly control its oil and gas lessees, for the government's own protection, to ensure

that its lessees can and will properly perform their obligations.

The Secretary protected the United States against Mrs. Crawford by rejecting her as an assignee, because she did not establish her qualifications, nor did she file the required lease bond. An assignment of a federal lease that has been rejected by the Secretary should not be enforceable by the assignee under state law. That would nullify the protections of the Mineral Leasing Act.

THE ONLY FEDERAL CASE THAT HAS EVER CONSIDERED THE EFFECT OF A REJECTED ASSIGNMENT HAS HELD THAT THE ASSIGNMENT IS NOT EFFECTIVE TO CONVEY ANY INTEREST TO THE ASSIGNEE

The Petitioners complain on p. 10 of their Petition that the Montana Courts cited only *Oasis Oil Co. v. Bell Oil & Gas Co.*, 106 F.Supp. 954 (W.D. Okla. 1952) in refusing to enforce the rejected assignment. However, *Oasis Oil* is the only federal court decision that has considered the effect of an assignment rejected by the Secretary.

In that case, Oasis Oil agreed to assign one-half of its interest in a federal lease to James Fish in exchange for his agreement to develop the lease. Another party, J. D. Crockett, claimed that Fish had orally agreed to assign him half of his interest in the lease. Under the contract between Oasis and Fish, two wells were drilled on the lease, one a producer and the other a dry hole. However, that was before the Secretary of the Interior refused to approve the assignment to Fish. The evidence was not clear as to why the assignment was rejected, but it appeared to be that not enough information was provided to the Department concerning Fish, and his failure to submit the filing fee. *Oasis Oil Co.*, 106 F.Supp. at 956.

Oasis Oil brought the action against Bell Oil & Gas to recover monies that Bell, as the purchaser of production from the lease, had withheld from Oasis. The Court held as follows:

> Title 30 USCA § 187a provides in part that the assignment of an interest in a government lease must be approved by the Secretary of the Interior before the assignment becomes valid. It also provides for certain contingencies which must be met. This court on the evidence before it cannot say whether the attempted assignment to Fish from Oasis under their contract would or would not be approved, and until such approval was forthcoming, Fish did not receive an interest in the controverted lease. Under these circumstances, Oasis Oil Company was the sole record holder of the lease and was entitled to all of the oil runs from the well on the lease.

Oasis Oil Co., 106 F.Supp. at 957. That is the proper rule, and the one followed by the Montana Courts.

The Petitioners argue on p. 11 of the Petition that if the Montana Courts had applied state law, they would have enforced the rejected assignment between the parties. That is not so.

No court or case has ever held that an assignment rejected by the Secretary is still effective between the parties. Pages 11-12 of the Petition cite *Isaacs v. DeHon*, 11 F.2d 943 (9th Cir. 1926), *Herigstad v. Hardrock Oil Co.*, 101 Mont. 22, 52 P.2d 171 (1935) and *Aronow v. Bishop*, 107 Mont. 317, 86 P.2d 644 (1939), in support of the Petitioners' argument that the Secretary's rejection is meaningless. However, none of these cases dealt with an assignment that had actually been rejected by the Secretary. The *DeHon* line of cases deal with assignments that had not even been considered by the Secretary because they had not been filed for approval.

More importantly, all of these decisions recognize that the assignee cannot claim any interest under an assignment that has been rejected by the Secretary. The *DeHon* case itself held that the assignor could not avoid his assignment simply because it had not been filed with the Land Office for approval, but the Court also acknowledged that "it may be that [the assignees] will lose the

fruits of this litigation by refusal of the Secretary to approve the assignment of the interests in the permit." *Isaacs v. DeHon*, 11 F.2d at 944. The *DeHon* Court acknowledged that if the Secretary rejects an assignment, the assignee cannot enforce any interest under the assignment, regardless.

This case, however, does not deal with mere lack of approval by the Secretary. The assignment to Mrs. Crawford was filed, considered and rejected. In rejecting the assignment, the Land Office exercised its legal authority to refuse to accept an unqualified assignee. The rejection protected the government by making the assignment legally invalid to vest Mrs. Crawford with any rights or responsibilities under the lease. The rejection precluded her from having any contractual relationship with the United States.

THE PETITIONERS HAVE NO CLAIM TO THE RENEWAL LEASES

Page 13 of the Petition refers to a footnote in the *Wallis* case, 384 U.S. at 69, n. 6, that certain sections of the Mineral Leasing Act "basically relate to the rights of private persons vis-a-vis the Secretary." Apparently the Petitioners do not consider the lessee's preference right to renewal leases to be a right vis-a-vis the Secretary. They are wrong.

Privity with the United States is critically important in this case. There are significant rights and responsibilities that a lessee has because of its relationship with the United States as the record title owner of a federal lease. Under the 1920 Mineral Leasing Act, only the record title owner of Lease 021056(b) had a "preferential right" to receive renewal leases after the original lease expired in 1954. The rejected assignment to Mrs. Crawford did not give her the necessary privity with the United States to claim the preference right to renewals. She did not have any right to receive the renewal leases that were issued in 1954 and 1964. In fact, the Land Office

rejected the renewal application that was filed on her behalf. Instead, the renewal leases were properly issued to George Norbeck, the record title owner of the lease, because only he had the necessary privity with the government to claim them.

As pointed out in *Wallis v. Pan American Petroleum Corp.*, 384 U.S. 63, 71 (1966), the general principle is "that the transfer of property by the United States to a private party is governed by federal law and only subsequent transfers among private parties are subject to state law." The renewal leases were properly granted by the United States to Mr. Norbeck under the controlling federal law, because the rejected assignment to Mrs. Crawford did not give her any rights vis-a-vis the Secretary to claim the renewal leases. Mrs. Crawford can have no right in the second renewal lease unless and until the Secretary approves an assignment of that lease to her.

THE DECISIONS OF THE MONTANA COURTS REST ON THE INDEPENDENT STATE LAW GROUND OF LACHES

The Petitioners' factual argument on pp. 12-13 of the Petition, on how the private parties treated the rejected assignment, is not only untrue, it is irrelevant to any reason for granting the Petition. Indeed, it is not relevant to anything except the holdings by the State Courts that the Petitioners' claims are barred by laches under Montana law.

The Petitioners' rendition of the facts attempts to distort the true equities between the parties, and lure this Court into reviewing the evidence and second-guessing the findings of fact by the State Courts. However, it is clear that the Montana Courts carefully considered the evidence in deciding ownership and that the Petitioners' claims are barred by equity.

The Petitioners, at pp. 4 and 12 of the Petition, try to raise some question whether Mrs. Crawford ever knew

about the Secretary's rejection of the assignment. However, under the law of Montana, which the Petitioners want to apply here, parties are held to be aware of their rights and obligations where circumstances are such as to put a person of ordinary prudence on inquiry. *Johnson v. Estate of Shelton*, 232 Mont. 85, 90, 754 P.2d 828, 831 (1988). It is beyond dispute that an ordinary prudent person dealing with a federal lease would have known that the assignment had to be approved by the Secretary. The controlling federal statute and the lease itself both said so. A prudent person would have checked the Land Office records to find out whether the assignment had been approved or rejected. Certainly, a prudent person would have known that the twenty-year term of the lease expired in 1954, that new leases had to be issued, and that only the record title owner of the lease had a preference right to receive renewal leases. A prudent person would have taken steps to make sure that the renewal leases were granted by the United States to the proper party.

The Petitioners' argument that the Montana Courts erred in refusing to apply state law to enforce the rejected assignment has no merit. The Montana Courts did apply state law. The Petitioners would have this Court believe that the State Courts decided ownership based on a cold, mechanical application of the Mineral Leasing Act requirement that assignments be approved by the Secretary, without looking at the equities between the parties. However, that is not so.

The Petitioners are correct when they say on p. 15 of the Petition that the Montana Supreme Court followed the reasoning of the State District Court. Actually, the Montana Supreme Court said that "[b]ased on the evidence presented in the record, we agree with the determination of the District Court and affirm the District Court." *Norbeck v. Crawford*, ___ Mont. ___, ___, 836 P.2d 1231, 1234 (1992) (A. 6).

Contrary to the statement on p. 6 of the Petition, however, the State Courts did not restrict their analysis to

the impact of the Secretary's rejection on the legal effect of the assignment. The District Court considered two issues in deciding ownership. In its own words, the Court posed the issues like this (A. 11):

> The question before the Court is the effect of the 1935 assignment of an interest in a federal oil and gas lease on the rights of the parties in light of (1) the rejection and lack of approval by the Secretary of the United States Department of the Interior, and (2) the passage of time and apparent abandonment of the leasehold interest.

In analyzing the second issue, the District Court expressly held that the Petitioners' ownership claims are barred by laches under Montana law (A. 13). Indeed, the Court's decision goes on for pages (A. 13-16) explaining the many reasons why the Petitioners' claims are inequitable and thus barred by the doctrine of laches. One of the primary reasons cited by the Court is that (A. 15):

> From 1935 to present, the [Petitioners] allowed the [Respondent] to continue to be responsible for the obligations under the lease, including the obligation to pay delay rentals (whether actually paid or not), to obtain renewals of the leases, etc.

The District Court correctly noted (A. 12-13) that under 30 U.S.C. § 187a (A. 22), a federal lease assignment is not effective to transfer any interest until the Secretary approves the assignment, and, until then, the assignor remains responsible to the United States to perform all of the lease obligations. This statute specifically states:

> Until such approval [by the Secretary], however, the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed.

These provisions were added to the Mineral Leasing Act in 1946 as Section 30A. As explained in the leading treatise on the subject, *Law of Federal Oil and Gas Leases*, Vol. 1, § 10.02[3], pp. 10-7 through 10-10 (1991):

> Section 30A of the Mineral Leasing Act [30 U.S.C. § 187a] conceives of assignments and subleases, when approved, as effecting a total substitution of the assignee or sublessee for the assignor or sublessor, as if the former "were the original lessee." This concept is embodied in the Interior Department's doctrine of record title and assignments of record title, a doctrine which pre-dates the enactment of Section 30A.
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> * * *
>
> As used by the Department, "record title" . . . refers to a particular type of interest and only as that interest is shown in the records of the Bureau of Land Management.
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> * * *
>
> The distinctive feature of an assignment of record title is that by such an assignment "the record title of the assignor to the interest transferred is conveyed to the assignee and the latter assumes the contractual relationship of the assignor to the United States to the extent of the interest which is transferred." Thus, the Department regards an assignment of record title as effecting a kind of novation, whereby the assignor's contractual relationship with the lessor is extinguished and the approved assignee is substituted fully for the assignor, becoming the new lessee, or record title holder of the lease. Accordingly, it is to the record title holder that the Department will direct crucial lease notices pertaining to lease termination, cancellation, and other matters, and it is generally the record title holder that the Department will hold responsible for lease obligations such as rental, royalties, and lease operations.

Because the assignment to Mrs. Crawford was rejected by the Secretary, Mr. Norbeck and his successors have been responsible, in the eyes of the government, for

accruing lease rentals, as well as royalty payments on production allocated to the second renewal lease.

Fidelity Gas and Shell Oil have performed operations under the second renewal lease as the agents of George Norbeck and his successors. Under Montana law, Mr. Norbeck and his successors, and ultimately the Respondent, are legally responsible for all operations under the renewal leases, including any environmental harms. See, Montana Code Annotated §§ 28-10-601, 28-10-602(1), 75-10-701(8)(a), and 75-10-715(1)(a).

Mrs. Crawford and her heirs, on the other hand, have never been charged with or undertaken any of these responsibilities. Nevertheless, they are now claiming all of the production proceeds allocated to the second renewal lease, after sleeping on their rights for over half a century.

Contrary to the statement on p. 8 of the Petition, the Respondent is not reaping a windfall, since she has to answer for the lessee's obligations under Lease 021056(b), as well as for operations on the lease. It is the Petitioners that are arguing for a windfall. They are claiming all of the benefits of the lease, though they have never accepted or performed any of the lessee's responsibilities.

The Montana doctrine of laches is well set out in the District Court's decision (A. 13-14). Laches is a creature of equity. There is no absolute rule as to what constitutes laches. Each case must be decided on its own particular circumstances. Laches is principally a question of the inequity of permitting a claim to be enforced. Laches means negligence in the assertion of a right. It is the practical application of the maxim in Montana Code Annotated § 1-3-218, that "[t]he law helps the vigilant before those who sleep on their rights." Applying the doctrine of laches to the facts of this case, the District Court determined that the Petitioners forfeited any rights they may have had to the proceeds of production to date (A. 16).

Page 15 of the Petition mentions that the Montana Supreme Court, in its decision, distinguished the case of *Gibbons v. Pan American Petroleum Corp.*, 262 F.2d 852 (10th Cir. 1958). To the extent the Montana Supreme Court distinguished *Gibbons*, it was for purposes of applying laches under state law. The *Gibbons* decision points out that it was not until 1954 that Congress amended the Mineral Leasing Act so that federal leases issued thereafter would terminate automatically for nonpayment of rentals. For federal leases issued before then, the unpaid rentals accumulated as a debt of the record title lessee to the United States. *Gibbons v. Pan American*, 252 F.2d at 854-855. The Montana Supreme Court considered this rule in affirming the District Court's ruling on laches, stating that:

> The Department of Interior viewed Norbeck as the record owner of the lease. The renewals were made and accepted in his name. A renewal submitted on behalf of Mrs. M. H. Crawford was rejected because the assignment had never been approved. Delay rentals became the responsibility of Norbeck, whether he paid them or not.

Norbeck v. Crawford, ___ Mont. ___, ___, 836 P.2d 1231, 1234 (1992) (A. 5).

The Petition seems to suggest that the Montana Supreme Court did not affirm the District Court's ruling that the Petitioners' claims are barred by laches. However, that is not so. In affirming the District Court, the Montana Supreme Court said:

> The material facts are not in dispute. Norbeck made an assignment to Mrs. Crawford but she failed to perfect the assignment with the Department of Interior pursuant to the language of the original lease and 30 U.S.C. § 187a. Later attempts were made to have Mrs. Crawford pay rentals but without success. As a result the obligations under the lease remained with Norbeck.

Norbeck v. Crawford, ___ Mont. ___, ___, 836 P.2d 1231, 1234 (1992) (A. 5). The Court's statement that "the obligations under the lease remained with Norbeck," is aimed directly at the District Court's laches holding. There was no reason for the Court to mention the lease obligations apart from laches and the equities involved in deciding the ownership issue. There is no doubt that the Supreme Court also affirmed the District Court's ruling on laches.

CONCLUSION

The State Court decisions in this case do not conflict with any decision of this Court or any United States court of appeals. To the extent there is any federal question in this case, the Montana Courts decided it correctly. An assignment of a federal lease that has been rejected by the Secretary cannot be enforced under state law. Such a rule would effectively eliminate the Mineral Leasing Act requirement that assignments be approved by the Secretary, and the federal policy inherent in that requirement.

Furthermore, the Montana Courts held, based on the facts of this case, that the Petitioners' claims are barred by the equitable doctrine of laches, an independent state law ground.

The State Courts properly looked to the Mineral Leasing Act in determining the legal effect of the rejected assignment, and to assess the equities between the parties, in deciding ownership of the disputed interest. The Petition should be denied.

Respectfully submitted,

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